

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:07CV45-V-02  
(3:03CR220-6-V)

BOBBY LEE WATSON,	)	
Petitioner,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
Defendant.	)	
_____	)	

**THIS MATTER** comes before the Court on the petitioner's Motion to Vacate, Set Aside, Or Correct Sentence under 28 U.S.C. § 2255, filed January 29, 2006.

By the instant Motion to Vacate, the petitioner seeks to raise several challenges to the performance and conduct of his former defense attorney and the prosecutor in his criminal case. However, the Court has reviewed the record of this matter and discovered that the petitioner's criminal appeal still is pending with the Fourth Circuit Court of Appeals under case number 06-4788. Thus, inasmuch as it is possible that the petitioner could obtain relief on his direct appeal and, in any event, he is not entitled both to proceed with that appeal while also pursuing the instant collateral challenge to the same case, this Motion to Vacate must be dismissed without prejudice.

**NOW, THEREFORE, IT IS ORDERED** that the instant Motion to Vacate is **DISMISSED without prejudice** as premature.

SO ORDERED.

Signed: February 5, 2007

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is fluid and cursive, with the first name "Richard" and last name "Voorhees" clearly legible.

Richard L. Voorhees  
United States District Judge

